

OPEN SPACE COUNCIL
MINUTES
Legislative Hall
Senate Hearing Room, Second Floor
Dover, DE
June 9, 2009
9:00 a.m.

ATTENDANCE

Council Members:

Lynn W. Williams, Chairperson

Paul Boswell, Esq.

Wayne Holden

John Schroeder

Advisory to:

Ex-Officio:

Charles A. Salkin, Parks & Recreation, DNREC for Secretary O'Mara

Public:

Charlotte Herbert, Delaware Association of Realtors

Staff:

Phil Carpenter, Fish & Wildlife, DNREC

Matthew Chesser, Parks & Recreation, DNREC

Austin Short, DOA

Elena Tkacz, Parks & Recreation, DNREC

Michael Valenti, DOA

Ron Vickers, Parks & Recreation, DNREC

LeeAnn Walling, Office of the Secretary, DNREC

Timothy Slavin, Director, State Historical & Cultural Affairs

I Call to Order/Announcements

Mrs. Lynn Williams, Chairperson, called the regular Open Space Council meeting to order at 9:03 a.m. She welcomed Council members, visitors, and staff and asked for announcements. She said DNREC Secretary Collin O'Mara, hoped to join the meeting but had to attend another meeting with Governor Markell in Philadelphia.

II Review of Meeting Minutes

Mrs. Williams asked for corrections to the March 10, 2009 minutes. Hearing none, she asked for a motion to approve the minutes. Council moved and seconded to accept the minutes as written.

III Financial Report

Mr. Vickers presented the financial report. Currently there is a remaining balance of \$2,810,509 from the FY 08 \$9.0 million in funding allocated on June 30, 2008. The federal reimbursement from the Coastal and Estuarine Land Conservation Program (CELCP) for \$2,997,000.00 is still anticipated. If the FY 09 funding of \$5.1 million comes through on June 30, 2009, there would be a total balance of \$10,907,509.

Because of the budget shortfall, there are two big caveats. (1) It is unknown whether DNREC will receive the FY 09 \$5.1 million. (2) All of the submitted CELCP match projects may not be approved.

Because of the uncertainty of the budget the balance of the FY 08 funds are being held back to pay off multi-year payments on previously approved projects. (Rustic Lands and Poplar Thicket)

There were two settlements since the last meeting: (1) Mitchell property - Inland Bays SRA at the end of the Assawoman Canal and (2) Rustic Lands II – Cape Henlopen SRA near the Glade Road. At the March 2009 meeting it was discussed that all Open Space funding had been put on hold since the middle of December 2008, pending a review of the budget and deficit projections. However, DNREC was able to move forward with the Mitchell property because there was another buyer ready to pay more than the State; but the Mitchells preferred to sell to the State. Rustic Lands II was the second phase of a project involving purchasing a conservation easement and fee simple purchase on connector land between two State-owned pieces. Mr. Salkin reminded Council of their agreement to acquire the easement as a connector and that Council had recommended a fee simple acquisition of the portion of land so that State would have ownership of the connector. Mr. Salkin thanked Council for their support.

Council was provided a handout with the revised Open Space Program projects and anticipated expenditures. This was based on the various funding sources previously discussed.

Mr. Holden asked if there were any pending acquisitions where the landowner was becoming uneasy waiting to go to settlement. Mr. Vickers said it has been touch and go in some cases. For some projects we are out of contract as far as the settlement date is

concerned. However, the landowners are still willing to wait. No contracts have been extended yet until the status of the funding is known.

Mr. Holden asked if the program funds currently available were frozen. Mr. Vickers replied that has been the situation since mid-December. Other than the 2 projects mentioned earlier, no other expenditures moved forward. Because of the budget freeze all purchase orders over \$2,500 are scrutinized by the Budget Office before being released. This makes it difficult to move forward with appraisals and surveys.

Mr. Holden said he would hate to see us lose any of these projects. He suggested asking the Conservation Fund or the Mount Cuba Foundation if they would be willing to front money on a relatively short notice to close the transactions as opposed to losing the parcels. Mr. Vickers said discussions were held with Blaine Phillips from the Conservation Fund. However, there are two potential problems with this approach. One is that the economic downturn resulted in less money available to the national conservation organizations, thereby making their project selection process more difficult. The second issue is that the Open Space Program would have difficulty entering into an agreement without knowing when the State might be able to pay back an outside conservation group.

IV Agency and Public Presentations

Mrs. Williams introduced Ms. Charlotte Herbert from the DE Association of Realtors as an interested member of the public attending today's meeting.

State Resources Areas (SRA):

Mrs. Williams said that probably for the next two years the Council will be concentrating on the SRAs. It will mean reviewing the process, having scientists come up with standards and criteria, providing recommendations to the Secretary and overseeing some type of appeals process.

Ms. Walling presented a Proposed Timeline for State Resource Area Standards and Maps. The proposed timeline begins with meeting with various programs in April – June 2009 and goes through SRA maps being transmitted to the counties in early 2011.

The opportunity for public input was discussed. As presented all Open Space Council meetings provide for a public comment period. A public input process for the development of Standards and Criteria and maps will be released in September 2009. Public workshops and a public hearing on draft Standards and Criteria will be later in 2009. In 2010 draft maps will be presented at workshops and a public hearing and letters will be sent to mapped landowners. Landowners will have the opportunity to object if their property is in an SRA. Objections will be reviewed by an on-site visit from a resource specialist. Legitimate objections will result in a removal of the site from the SRA map. Any correspondence with landowners needs to clearly describe the process and what an SRA designation means in terms of land use. Other appeal processes, similar to the State wetlands appeal process, are being reviewed as options for the State and/or counties.

As discussed at previous meetings the development of standards and criteria will involve reaching out to various environmental program areas for input. With direction from the Open Space

Council and the Interagency Working Group a list of program areas, including scientific and policy expertise, was formulated and subgroup committees are being formed to coordinate the information. These groups will review the definitions in the law, review their own program areas and environmental issues, check on overlap with their specific areas of expertise and the State Resource Area process, and start to discuss new standards and criteria for selecting SRAs. A Standards and Criteria workshop is scheduled for July 23rd at Killens Pond for DNREC's scientist and technical staff to begin reviewing data layers and resources that should be included in the SRAs.

Mrs. Williams reminded the Council that it was their responsibility to see this process come to fruition. They also agreed a few meetings ago, to consider the group as a committee of the whole and Mrs. Williams would represent the Council at the various meetings. All Council members would be notified of the meetings and welcome to attend. All items discussed will come back to the full Council meeting for review and more discussion before recommendations are provided to the Secretary.

Mr. Boswell asked if there was a way to put any teeth in the process so the counties would participate.

Mrs. Williams said this hasn't been worked out yet.

Mr. Vickers said the intent of the Land Protection Act and the SRA process is to provide the counties with the best available natural resource information for their land use planning.

Ms. Walling said people jump to the conclusion that there is some kind of regulation or some kind of prohibition by being in an SRA. One intent of the process is to show that there is a lot one can do with incentives and flexibility within the zoning codes.

Mr. Vickers said the map objection process is not in the law. It is an added opportunity to meet with landowners and review what is on their land and explain why their property is in an SRA. Currently the law only provides an appeal to any County process.

Mr. Salkin brought forward HB106 which is related to the approval process for the Land & Water Conservation Trust Fund grants. The bill proposes to move the duties from the Open Space Council to the Parks and Recreation Advisory Council. He reminded Council of discussions at the September 11 2007 meeting whereby former Representative Valihura, then a Council member, requested this change. The Council unanimously supported this move. This year the bill was introduced by Representative Brady, a new Open Space Council member. It passed the House of Representative unanimously in March. It was assigned to the Senate Finance Committee and has not moved forward. Mr. Salkin said he was not aware of any objections. However, the reason it may not be moving forward was because of the number of bills and all of the budget discussion.

Mrs. Williams asked that Council members contact the Senate Finance Committee and encourage the Senators to move this bill forward.

V Executive Session - Discussion of Site Acquisition Contracts

The Council adjourned to Executive Session at 9:51AM to discuss site acquisition contracts. The Council returned to Open Session at 10:04AM.

VI Project Recommendations

There were two projects discussed but no project recommendations.

VII Next Meeting and Adjournment

Mrs. Williams asked Council and staff if they would be willing to change the scheduled September 8, 2009 Open Space Council meeting to September 15, 2009 due to Labor Day falling on the 8th. Council agreed to change the date to Tuesday, September 15, 2009 in the 2nd Floor Senate Hearing Room, Legislative Hall, Dover starting at 9:00 a.m.

Mrs. Williams asked for a motion to adjourn the meeting. Motion was made by Mr. Schroeder and seconded by Mr. Holden. The meeting adjourned at 10:09AM.

Respectfully submitted: Rose Ryödi